



COUNCIL AGENDA: 9/9/14

ITEM: 4.1

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Planning Commission

SUBJECT: SEE BELOW

DATE: August 25, 2014

SUBJECT: AN ORDINANCE OF THE CITY OF SAN JOSÉ AMENDING SECTIONS 20.100.180, 20.100.220, 20.100.630, 20.100.800, 20.100.820, 20.100.830, 20.100.920, 20.100.940, AND 20.100.950, OF CHAPTER 20.100 OF TITLE 20 (THE ZONING CODE); AND SECTION 21.04.140 OF CHAPTER 21.04 AND SECTIONS 21.07.040, 21.07.050, 21.07.060, AND 21.07.080 OF TITLE 21 (ENVIRONMENTAL REVIEW) OF THE SAN JOSE MUNICIPAL CODE TO STREAMLINE THE CITY'S ENVIRONMENTAL CLEARANCE, PERMITTING, AND OTHER LAND USE ENTITLEMENT PROCESSES, AND TO MAKE OTHER TECHNICAL, NON-SUBSTANTIVE, OR FORMATTING CHANGES

RECOMMENDATION

The Planning Commission voted 6-0-1 (Kline absent) to recommend that the City Council approve the proposed ordinance as recommended by the Planning Director.

OUTCOME

Approval of the proposed ordinance will ensure greater internal consistency within the Municipal Code related to the City's environmental clearance process and will complete the Code revisions to implement the requirements of the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., and the State CEQA Guidelines, consistent with the court decision in *California Clean Energy Committee v. City of San Jose*. More specifically, the ordinance would:

1. Add provisions making the Council the Initial Decision-making Body for combined consideration of land use permit applications that have an Environment Impact Report (EIR) identifying significant unmitigated impacts;
2. Establish Council as the Appeal Decision-making Body for combined consideration of land use permit applications with environmental clearance documents that are appealed concurrently; and

3. Reduce the time period to request Reconsideration of the Council's decision on an EIR from ten days to three business days.

BACKGROUND

On August 13, 2014, the Planning Commission conducted a public hearing on the proposed ordinance. See the attached Staff Report to the Planning Commission for the full analysis, description of the public outreach, and coordination conducted on the proposed amendments to Title 20 and Title 21 of the Municipal Code.

ANALYSIS

Planning staff summarized the recommended provisions and explained that the proposed ordinance would allow concurrent appeals of Planning permits under Title 20 and environmental clearance documents under Title 21 to be decided together by the City Council, rather than requiring separate appeal hearings with separate decision-making bodies.

Staff also summarized the provisions of an ordinance (No. 29390) that Council adopted in April 2014, as recommended by the City Attorney, which amended Title 21 to align the City's environmental clearance process for EIRs with the requirements of CEQA as set forth in the Sixth District Court of Appeal's ruling in the *California Clean Energy Committee v. City of San José* decision.

In addition, staff noted that on August 12, 2014, staff received a letter from the Santa Clara and San Benito Counties Building & Construction Trades Council, in opposition to some provisions of the current and proposed ordinance. The letter expresses concerns with the current reconsideration process, the proposed change in duration for the period to file for reconsideration from ten days to three business days, and the proposed changes to noticing.

Staff provided the following responses to the letter:

- The current Title 21 Code provisions address a State appeal court decision regarding who the decision-making body must be for both certification of an EIR with significant impacts and concurrent initial decision-making on a project.
- For some projects, the reconsideration process in Title 21 provides an opportunity for an administrative reconsideration where no appeal process now exists as a result of the court decision.

- Changing the time period to file for reconsideration to 3 business days would be consistent with the timing to file an appeal of a CEQA approval where an appeal is an option – such as for a Mitigated Negative Declaration for a Conditional Use Permit (CUP), both of which would be approved by the Planning Commission and appealed to the City Council.
- Proposed revisions to noticing requirements are in conformance with State law and address practical challenges for noticing projects that encompass large areas such as the entire City.

There was no public testimony.

Planning Commission Discussion

Commissioner Bit-Badal asked whether the court ruling only applied to the City of San José. Staff responded that although there is no requirement for cities to have a reconsideration process, there are some other cities that do have such a process, such as Cupertino.

The Senior Deputy City Attorney clarified that the regulations that are proposed are specific to the City of San José, that CEQA allows agencies to implement administrative rules on how they conduct environmental review, and the City has long had a process by which appeals are available from subordinate bodies to the City Council. The Planning Commission previously certified all EIRs and that certification had to be appealed to City Council. The Sixth District Court of Appeal decision stated that if the City Council is the decision-making body, as it is for a General Plan Update, then the Council needs to certify that the EIR was completed in compliance with CEQA; the City cannot rely on a certification by the Planning Commission. In practice, the appeal process had served a very important function in the City's consideration of the environmental clearance document. Now that EIRs with significant unmitigated impacts have to go to the City Council for an initial decision, the City is instituting a procedure by which the Council could have a second opportunity for consideration if a member of the public contends that the Council erred in some way in certifying an EIR.

Commissioner O'Halloran asked, in making the period just 3 days, if that provides little opportunity to challenge the previous decision. The Senior Deputy City Attorney responded that the 3 business-day appeal period has been in effect for over a decade, and when the City had added the reconsideration process it departed from that standard in establishing a 10-day reconsideration period. A Notice of Determination (NOD) must be filed within 5 business days of the decision, so a 3 business-day reconsideration period would allow for that to occur. The 10-day period results in a longer period of time for project approval to be final.

Commissioner O'Halloran asked staff why the appeal or reconsideration process is necessary. Staff clarified that an appeal is a process where a different decision-making body considers the project in a new hearing. Reconsideration is the only option instead of an appeal for EIRs where the Council is the Initial Decision-making Body. The City Council would be looking at the EIR again. The existing appeal process for other types of CEQA clearance in the City is now 3 business days. The City does not often get appeals of CEQA documents, and when it does, they

generally are submitted in a timely manner, within the 3 business days. The purpose of CEQA is to provide information to the public regarding environmental impacts through the review process and public noticing. The reconsideration process is another way to try to get environmental issues addressed adequately through the administrative process without the time and expense of litigation. Commissioner O'Halloran said he had difficulty seeing a large value in reconsideration. Staff responded that the reconsideration process, itself, is not proposed to be revised; rather, the timing of reconsideration is proposed to be changed.

Commissioner Bit-Badal asked if staff was able to do outreach to environmental groups to let them know about this process change. Staff answered that standard public outreach per Council Policy had been done including legal publication and an e-mail blast to people that signed up for notices, and there could be environmental groups on that list.

Commissioner Abelite made a motion to approve staff's recommendation, and stated that the proposed ordinance aligns with the changes adopted by Council already. He noted that this is a legal issue, and that he did not have a problem with the 3 business-day proposal because the City has been operating for a long period of time with that timing for appeals and this is really just a reconsideration aspect of this entire program. He added that anybody who plans on litigating an EIR will not be taken by surprise on the 3 business-day versus the 10-day issue; they will be preparing to litigate months and months in advance.

EVALUATION AND FOLLOW-UP

If the proposed ordinance is approved, Titles 20 and 21 of the City's Municipal Code will be amended to improve internal consistency within the Municipal Code concerning the City's environmental clearance process, and it will complete the Code revisions necessary to implement the requirements of the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., and the State CEQA Guidelines.

POLICY ALTERNATIVES

Alternative #1: Approve the proposed ordinance as per staff recommendation with the exception of changing the time for requesting reconsideration from 10 days to 3 business days.

Pros: The existing 10-day provision allows ample time to request reconsideration.

Cons: The existing 10-day provision is inconsistent with the existing 3 business-day provision in the Municipal Code for filing an appeal of the Initial Decision-making Body's determination on environmental clearance.

Reason for not recommending: The existing 10-day period for filing a petition for reconsideration may unnecessarily delay the filing of a Notice of Determination by 5 to 10 days. Past practice has shown that the 3-day period for appeals has been adequate for those seeking administrative review of CEQA determinations.

PUBLIC OUTREACH/INTEREST

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1,000,000 or greater. **(Required: Website Posting)**
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the above criteria, staff followed Council Policy 6-30: Public Outreach Policy. Planning staff presented the proposed ordinance to the PBCE Developers' Roundtable on August 1, 2014. A public hearing notice including the Planning Commission and City Council hearing dates was published in the San José Post-Record and emailed to a list of interested groups and individuals. Planning staff received a letter in opposition to the proposed ordinance. The comments in this letter are addressed in the "Analysis" section of this memorandum. After the Planning Commission Hearing, staff received comments requesting clarification to provide more certainty regarding when an EIR with no significant impacts after mitigation would be eligible for consideration by an Initial Decision-making Body other than the City Council. In response, staff has proposed to modify the proposed ordinance with language to clarify the intent to have Council be the Initial Decision-making Body on EIRs for projects with significant unavoidable environmental impacts or projects with significant impacts where the project proponent declines to incorporate mitigation measures to reduce the significant impacts to less than significant level.

COORDINATION

This report and the proposed ordinance were coordinated with the City Attorney's Office.

HONORABLE MAYOR AND CITY COUNCIL

August 25, 2014

Subject: Environmental Clearance Streamlining Ordinance with Changes to Titles 20 and 21

Page 6

CEQA

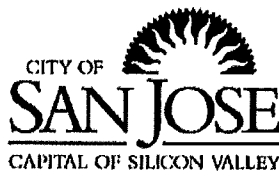
Not a Project, File No. PP10-068 (c), Code or policy change that involves no changes in the physical environment.

/s/

HARRY FREITAS, SECRETARY
Planning Commission

For questions please contact Steve Piasecki, Interim Planning Official, at 408-535-7893.

Attachments: -Staff Report Including Matrix of Planning Entitlement Aligned Processes
Distributed at Planning Commission Meeting
-Public Correspondence



Memorandum

TO: PLANNING COMMISSION

FROM: Harry Freitas

SUBJECT: SEE BELOW

DATE: July 30, 2014

SUBJECT: An Ordinance of the City of San José amending Sections 20.100.180, 20.100.220, 20.100.630, 20.100.800, 20.100.820, 20.100.830, 20.100.920, 20.100.940, and 20.100.950, of Chapter 20.100 of Title 20 (the Zoning Code); and Section 21.04.140 of Chapter 21.04 and Sections 21.07.040, 21.07.050, 21.07.060, and 21.07.080 of Title 21 (Environmental Review) of the San José Municipal Code to streamline the City's environmental clearance, permitting, and other land use entitlement processes, and to make other technical, non-substantive, or formatting changes within those Chapters of Title 20 and Title 21 including but not limited to Chapters 20.100, 21.04, and 21.07

RECOMMENDATION

Planning staff recommends that the Planning Commission recommend to the City Council approval of the ordinance changes outlined in this memorandum to amend Titles 20 and 21 of the San José Municipal Code to streamline the City's environmental clearance and land use entitlement processes and make other nonsubstantive changes within those chapters of Titles 20 and 21.

OUTCOME

The proposed ordinance is intended to ensure internal consistency within the Municipal Code concerning the City's environmental clearance process, and it will complete the Code revisions necessary to implement the requirements of the California Environmental Quality Act (CEQA), Public Resources Code Section 21000 et seq., and the State CEQA Guidelines.

BACKGROUND

On September 30, 2013, the Sixth Appellate District Court of Appeal of the State of California issued a decision holding that the San José Municipal Code improperly delegated authority to the Planning Commission to certify Environmental Impact Reports (EIRs) in cases where the City Council is the decision-making body on the project for which the EIR has been prepared, *California Clean Energy Committee v. City of San José* (2013) 220 Cal.App.4th 1325. On April 8, 2014, the City Council adopted Ordinance No. 2930 as recommended by the City

PLANNING COMMISSION

July 30, 2014

Subject: CEQA Appeals Streamlining Titles 20 and 21 Code Amendments

Page 2

Attorney's Office, amending Chapters 21.04 and 21.07 of Title 21 of the Municipal Code to align the City's environmental clearance process for EIRs with the requirements of CEQA as set forth in the court ruling in the *California Clean Energy Committee* decision. Attachment A compares the EIR certification process that was in place before the *California Clean Energy Committee* decision with the recommended revised process.

ANALYSIS

The new EIR certification process that was approved by the City Council with the adoption of Ordinance No. 29390 requires the Council to hear and certify all EIRs for projects that are subject to Council approval, such as General Plan amendments, rezonings, and prezonings, and some Conditional Use Permits. In addition, Ordinance No. 29390 provides that Council will hear and certify any EIR that identifies one or more unmitigated significant environmental effects and requires findings or a statement of overriding considerations.

When Ordinance No. 29390 was adopted, it was recognized that Title 20 of the Municipal Code would also need to be amended to designate the City Council as the decision-making body for any project needing findings or a statement of override, in order to streamline CEQA clearance and some land use entitlement processes. The Title 20 amendments were not presented to Council at the same time as Ordinance No. 29390 was being considered, due to the Code requirement that ordinances amending Title 20 be referred to the Planning Commission for review prior to consideration by Council.

The recommended ordinance will complete the alignment of the City's EIR certification process with the requirements of CEQA as set forth in the court ruling in the *California Clean Energy Committee* decision. The recommended ordinance will amend Title 20 of the Code to provide that only one initial decision-making body needs to act on a given project for both project approval and CEQA clearance. The recommended ordinance will further amend Chapter 20.100 of the Code to designate the City Council as the appeal decision-making body for all projects in which appeals have been filed for both approval of the project under Chapter 20.100 and environmental clearance for the project under Title 21 of the Code. These provisions will streamline the City's environmental clearance and some land use entitlement processes, and will help to ensure that project conditions and CEQA mitigation measures are consistent.

As indicated in Attachment A – Summary of EIR Certification Process, Ordinance No. 29390 includes a new EIR reconsideration process intended to require project opponents to give Council the opportunity to reconsider its decision before litigation is initiated. After Ordinance No. 29390 was approved, staff determined that allowing a request for reconsideration to be filed within ten (10) business days of the Council decision on an EIR could unduly delay the filing of Notices of Determination and project commencement dates. Therefore, the recommended ordinance would shorten this time period to three (3) business days and make technical corrections to the reconsideration noticing provision.

PLANNING COMMISSION

July 30, 2014

Subject: CEQA Appeals Streamlining Titles 20 and 21 Code Amendments

Page 3

PUBLIC OUTREACH/INTEREST

Planning staff has scheduled this item to be presented to the PBCE Developers' Roundtable on August 1, 2014.

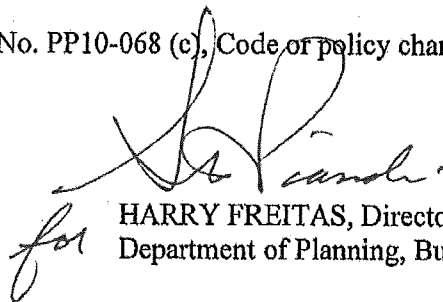
Public outreach for this proposal complies with the City Council's Public Outreach Policy and the Municipal Code. A public hearing notice including the Planning Commission and City Council hearing dates was published in the San José Post-Record and emailed to a list of interested groups and individuals. Staff has posted the hearing notice, staff report and draft ordinance on the Department's website and has been available to discuss the proposal with interested members of the public.

COORDINATION

The preparation of the proposed ordinance and this staff report were coordinated with the City Attorney's Office.

CEQA

CEQA: Not a project, File No. PP10-068 (c), Code or policy change that involves no changes in the physical environment.

A handwritten signature in black ink, appearing to read "H. Freitas", is written over the printed name and title.

HARRY FREITAS, Director
Department of Planning, Building and Code Enforcement

For questions, please contact Jenny Nusbaum, Senior Planner at 408-535-7872.

Attachments: Attachment A – Summary of EIR Certification Process;
Attachment B – CEQA Guidelines Excerpts; and
Attachment C – Draft Ordinance

ATTACHMENT A

Summary of EIR Certification Process

Prior EIR Certification Process

- The Planning Commission was responsible for considering and certifying all EIRs as complete and prepared in compliance with CEQA.
- The Planning Commission decision was appealable to the City Council.
- The Planning Commission could act on a project concurrently with certification of an EIR, if the EIR was for a project that the Planning Commission could approve, but approval was not final until the EIR appeal period expired.
- The City Council relied on the Planning Commission EIR certification on projects that required City Council approval (General Plan amendments, Title 20 Code amendments, rezonings, rezonings and certain conditional use permits), unless an EIR certification appeal had been filed.

Revised EIR Certification Process

- The decision maker responsible for approving the project will also be responsible for certifying any EIR for the project, unless the EIR certification requires findings under Section 15091(a)(3) of the CEQA Guidelines related to unmitigated significant environmental effects or a statement of overriding considerations under Section 15093 of the CEQA Guidelines.
- The City Council will be responsible for EIR certification and project approval where the EIR certification requires findings under Section 15091(a)(3) of the CEQA Guidelines related to unmitigated significant environmental effects or a statement of overriding considerations under Section 15093 of the CEQA Guidelines.
- Planning Director/Commission certification decisions will be appealable to the City Council.
- Planning Director/Commission project approval is not final until the EIR certification appeal period expires.
- The City Council will be the appeal decision making body for all projects in which appeals have been filed for both approval of the project under Chapter 20.100 and environmental clearance for the project under Title 21 of the Code.
- The Planning Commission will consider and make a recommendation to the City Council on (1) EIRs for projects that the City Council must approve and (2) for all EIRs that require findings under Section 15091(a)(3) of the CEQA Guidelines related to unmitigated significant environmental effects or a statement of overriding considerations under Section 15093 of the CEQA Guidelines.
- Where the City Council is the initial decision making body on an EIR, an interested party must request Council reconsideration of the certification decision, before filing suit to challenge the EIR. The purpose for providing a reconsideration procedure is to require project opponents to give Council the opportunity to reconsider its decision before litigation is initiated.

CEQA Streamlining Ordinance
Attachment B: CEQA Guidelines Excerpts

14 CCR § 15091

§ 15091. Findings.

(a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

(1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.

(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

(3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

(b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.

(c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

(d) When making the findings required in subdivision (a)(1), the agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to avoid or substantially lessen significant environmental effects. These measures must be fully enforceable through permit conditions, agreements, or other measures.

(e) The public agency shall specify the location and custodian of the documents or other material which constitute the record of the proceedings upon which its decision is based.

(f) A statement made pursuant to Section 15093 does not substitute for the findings required by this section.

14 CCR § 15093

§ 15093. Statement of Overriding Considerations.

(a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposal project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable."

(b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

(c) If an agency makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091.

DRAFT

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING
SECTIONS 20.100.180, 20.100.220, 20.100.630,
20.100.800, 20.100.820, 20.100.830, 20.100.920,
20.100.940 AND 20.100.950 OF CHAPTER 20.100 OF
TITLE 20 AND SECTION 21.04.140 OF CHAPTER 21.04
OF TITLE 21 AND SECTIONS 21.07.040, 21.07.050,
21.07.060 AND 21.07.080 OF CHAPTER 21.07 OF TITLE
21 OF THE SAN JOSE MUNICIPAL CODE TO
STREAMLINE THE CITY'S ENVIRONMENTAL
CLEARANCE AND PERMITTING PROCESSES**

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN
JOSE:**

SECTION 1. Section 20.100.180 of Chapter 20.100 of Title 20 of the San José
Municipal Code is hereby amended to read as follows:

20.100.180 Environmental Review

If required by the Director, every application shall be accompanied by an application
for, or verification of, environmental clearance or exemption for the project in
accordance with Title 21 of the San José Municipal Code. Notwithstanding any
provision in any other Section, Part, Chapter or Title of this Code, the City Council shall
be the initial decision making body on the application if the final environmental impact
report for the project indicates that approval of the project will require a finding under
Section 15091(a)(3) of the California Environmental Quality, Public Resources Code
Section 21000 et seq. Guidelines (CEQA Guidelines) related to unmitigated significant

environmental effects, or a statement of overriding considerations under Section 15093 of the CEQA Guidelines.

SECTION 2. Section 20.100.220 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.220 Appeal - Hearing Body

Decisions on permits or approvals pursuant to this Chapter are subject to appeal as set forth in Table 20-60 which lists the initial decision maker and the decision making body which will hear any appeal.

Table 20-260 Appeal Hearing Body		
Application	Initial Decision Making Body₁	Appeal Decision Making Body₂
Administrative permit	Director of Planning	No Appeal
Site development permit	Director of Planning	Planning Commission
Site development permit - Projects within downtown districts and exceeding 150 feet and FAR of 6:1	Director of Planning	City Council
Single-family house permit	Director of Planning	
Administrative decision	Director of	No Appeal

	Planning	
Director's hearing	Director of Planning	Planning Commission
Planned development permit	Director of Planning	Planning Commission
Special use permit	Director of Planning	Planning Commission
Special Use Permit – for schools that are elementary or secondary (public or private), Post Secondary, Trade and Vocational, or driving (class C & M license) in the PQP Public/Quasi-Public Zoning District.	Director of Planning	City Council
Special Use Permit – for church/religious assembly in the PQP Public/Quasi-Public Zoning District.	Director of Planning	City Council
Special Use Permit – for privately-operated museums, libraries, parks, playgrounds, or community centers in the PQP Public/Quasi-Public Zoning District.	Director of Planning	City Council
Conditional use permit	Planning Commission	City Council
Conditional use permit - Stadium, more than 2,000 seats including incidental support uses	City Council	No Appeal
Conditional use permit - Drinking establishments with an approved maximum occupancy load of over 250 persons that operate between 12:00 midnight and 6:00 a.m.	City Council	No Appeal

Conditional use permit involving off-premises sale of alcoholic beverages requiring a determination under Chapter 6.84 where findings required by Planning Commission under Section 6.84.030.B.1. through 4. cannot be made	City Council	No Appeal
Variance	Director of Planning	Planning Commission
Exception	Director of Planning	Planning Commission
Sidewalk café permit	Director of Planning	City Council
Tree removal permit	Director of Planning	
Administrative decision	Director of Planning	No Appeal
Director's hearing	Director of Planning	Planning Commission
Zoning code verification certificate	Director of Planning	No Appeal

- 1 The City Council is the Initial Decision Making Body if the final environmental impact report for the project indicates that approval of the project will require a finding under Section 15091(a)(3) of the California Environmental Quality CEQA), Public Resources Code Section 21000 et seq. Guidelines related to

unmitigated significant environmental effects, or a statement of overriding considerations under Section 15093 of the CEQA Guidelines.

- 2 The City Council is the Appeal Decision Making Body for all projects in which appeals have been filed for both approval of the project under this Chapter and environmental clearance for the project under Title 21 of this Code.

SECTION 3. Section 20.100.630 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.630 Findings

- A. The Director, the Planning Commission or City Council ~~on appeal~~, as set forth in Table 20-260, shall grant the Site Development Permit after review of project design, only if all of the following findings are made:

1. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.
2. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.
3. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor

which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

4. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.
 5. Traffic access, pedestrian access and parking are adequate.
 6. The application is either consistent with the General Plan or counterbalancing considerations justify the inconsistency.
- B. The Director, the Planning Commission, or the City Council, as set forth in Table 20-260, shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate such findings.

SECTION 4. Section 20.100.800 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.800 Applicability

The provisions of this Part apply to and govern the issuance of all permits made subject to the provisions of this Part. All permits governed under this Part shall hereinafter be referred to as Special Use Permits, and shall be issued by the Director or by the Planning Commission on appeal from a decision of the Director, except that the City

Council shall issue the Special Use Permit if the final environmental impact report for the project indicates that approval of the project will require a finding under Section 15091(a)(3) of the California Environmental Quality CEQA), Public Resources Code Section 21000 et seq. Guidelines related to unmitigated significant environmental effects, or a statement of overriding considerations under Section 15093 of the CEQA Guidelines.

SECTION 5. Section 20.100.820 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.820 Findings

- A. In addition to any findings required by any other section of this Title, the Director, ~~or Planning Commission~~ or City Council as appropriate, may issue a Special Use Permit only if all the following findings that:
1. The proposed use at the location requested will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety, or general welfare; and
 2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other

development features prescribed in this Title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and

3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
 - b. By other public or private service facilities as are required.

- B. The Director, ~~or Planning Commission~~ or City Council as appropriate, shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate such findings.

SECTION 6. Section 20.100.830 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.830 Term

- A A Special Use Permit may be time-conditioned, as appropriate, by the Director of Planning, ~~or the Planning Commission~~ or City Council, as appropriate.
- B. If the use authorized by the Special Use Permit is discontinued for a period of twelve (12) months, the Special Use Permit will expire and the Special Use Permit will no longer be in effect.

SECTION 7. Section 20.100.920 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.920 No Right to Issuance

Pursuant to and in accordance with the provisions of this Part, the Director, or the Planning Commission, may issue Planned Development Permits, except that the City Council shall issue the Planned Development Permit if the final environmental impact report for the project indicates that approval of the project will require a finding under Section 15091(a)(3) of the California Environmental Quality CEQA), Public Resources Code Section 21000 et seq. Guidelines related to unmitigated significant environmental effects, or a statement of overriding considerations under Section 15093 of the CEQA Guidelines. Under no circumstances shall any applicant have the right to have a Planned Development Permit issued for any property in a Planned Development District and nothing contained in this Part shall, in any event or under any circumstances, be deemed or construed to confer on any applicant the right to have a Planned Development Permit issued for any property.

SECTION 8. Section 20.100.940 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.940 Findings

- A. The Director, ~~or the Planning Commission on appeal,~~ or the City Council as appropriate, may issue a Planned Development Permit only if all of the following findings are made:

1. The Planned Development Permit, as issued, furthers the policies of the General Plan;
 2. The Planned Development Permit, as issued, conforms in all respects to the Planned Development zoning of the property;
 3. The interrelationship between the orientation, location, mass and scale of building volumes, and elevations of proposed buildings, structures and other uses on-site are appropriate, compatible and aesthetically harmonious;
 4. The environmental impacts of the project, including, but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative effect on adjacent property or properties.
- B. The Director, ~~or the Planning Commission on appeal~~ or the City Council as appropriate shall deny the application where the information submitted by the applicant and/or presented at the public hearing fails to satisfactorily substantiate such findings.

SECTION 9. Section 20.100.950 of Chapter 20.100 of Title 20 of the San José Municipal Code is hereby amended to read as follows:

20.100.950 Amendment Findings

- A. Amendments may be granted at the discretion of the Director, ~~or~~ Planning Commission on appeal, or City Council as appropriate upon a finding that the amendment does not negate any findings required by Section 20.100.940.
- B. Nothing in this section shall preclude the Director, ~~or~~ Planning Commission or City Council from making reasonable modifications, additions or deletions to any condition in order to protect the public peace, health, safety, morals or welfare.

SECTION 10. Section 21.04.140 of Chapter 21.04 of Title 21 of the San José Municipal Code is hereby amended to read as follows:

21.04.140 Appeals – General

- A. Any determination regarding the appropriate environmental clearance for a project made by the Director, ~~or~~ Planning Commission or other decision-making body may be appealed to the City Council as set forth and described in this Section.
- B. Appeals of certifications of environmental impact reports shall follow and adhere to the procedures set forth in Chapter 21.07.
- C. Appeals of determinations on a negative declaration or a mitigated negative declaration shall follow and adhere to the provisions of Chapter 21.06.
- D. Appeals to City Council of environmental determinations that a project is not subject to CEQA, is exempt from CEQA under the provisions of CEQA or this Title, or should be approved in reliance on a previously certified Environmental

Impact Report or adopted Negative Declaration shall follow and adhere to the provisions of this Section.

E. Appeals of an environmental clearance determination allowed under this Section to the City Council shall proceed in accordance with and adhere to the following provisions and conditions:

1. A person wishing to file a written appeal of a determination on environmental clearance with the Director under this Section shall file such appeal no later than 5:00 p.m. on the third (3rd) business day following the earliest to occur of the following events:
 - a. An action is taken on the environmental determination if that determination is made through or as a part of a public hearing; or
 - b. An action is taken after a public hearing on the project by a decision-making body making a decision on the project, which decision relied upon the determination on environmental clearance at issue; or
 - c. Commencement of the project if the project is undertaken without any public hearing.
2. The appeal shall be filed on a form prescribed by the Director. The appeal shall state with specificity the reasons that the environmental clearance determination should be found not to be complete or not to have been prepared in compliance with the requirements of CEQA or this Title.

3. No appeal shall be considered unless it is based upon issues that were raised previously either orally or in writing to a recommending body or a decision-making body at or prior to a public hearing whenever the underlying project is considered at a public hearing.
4. The City Council shall conduct appeal hearings under this Chapter when the City is the lead agency.
5. Upon receipt of a timely appeal under this Section, the Director shall schedule a hearing and transmit a hearing notice for the appeal hearing before the City Council utilizing the processes and timelines set forth in Section 21.07.050.
6. The maker of the environmental decision being appealed shall prepare a report and recommendation on the appeal to the City Council and such report shall be provided to the appellant, applicant, and adjacent property owner(s) in the same manner provided for hearing notices pursuant to provisions of Section 21.07.050.
7. The appeal hearing before the City Council under this Section shall be a hearing de novo.
8. The City Council may elect to hear an appeal of the environmental clearance determination with a public hearing on a related underlying project.
9. Upon the conclusion of the appeal hearing under this Section, the City Council may find that the environmental clearance determination

conforms to the requirements of CEQA and this Title or that the environmental clearance determination does not conform to the requirements of CEQA or this Title.

10. If the City Council finds that the environmental clearance determination comports with CEQA and this Title, it shall uphold the environmental clearance determination and may then immediately take action upon the related project. If the City Council finds that the environmental clearance determination does not comport with CEQA and this Title, it may require the Director to re-examine and process such environmental clearance determination and shall not take any approval actions on the related project.

11. All decisions of the City Council under this Section shall be final.

SECTION 11. Section 21.07.040 of Chapter 21.07 of Title 21 of the San José Municipal Code is hereby amended to read as follows:

21.07.040 Appeal of Director or Planning Commission Certification

- A. Any person may file a written appeal of the Director's ~~or~~ Planning Commission's or other decision-making body's certification of a final EIR with the Director, no later than 5:00 p.m. on the third business day following the certification.
- B. The appeal shall be filed on a form prescribed by the Director. The appeal shall state with specificity the reasons that the final EIR should not have been certified.

- C. No appeal shall be considered unless it is based on issues which were raised at the public hearing before the Director or Planning Commission either orally or in writing or in writing prior to the public hearing.
- D. The City Council shall conduct appeal hearings.

SECTION 12. Section 21.07.050 of Chapter 21.07 of Title 21 of the San José Municipal Code is hereby amended to read as follows:

21.07.050 Hearing Notice - Appeal

- A. Upon receipt of a timely appeal, the Director shall schedule a hearing on the appeal of the Director's, ~~or Planning Commission's~~ or other decision making body's certification of a final EIR before the City Council.
- B. At least ten (10) days prior to the appeal hearing, written notice of the hearing shall be placed in the mail to the person filing the appeal and, the applicant, ~~and the owners of property contiguous to the project as shown on the latest equalized assessment roll adopted by the County of Santa Clara.~~

SECTION 13. Section 21.07.060 of Chapter 21.07 of Title 21 of the San José Municipal Code is hereby amended to read as follows:

21.07.060 Appeal Hearing

- A. The certification appeal hearing of the City Council shall be de novo.

- B. The City Council may hear the appeal of the certification concurrently with an appeal hearing on the project.
- C. Upon conclusion of the certification appeal hearing, the City Council may uphold, reverse or modify the Director's ~~or~~ Planning Commission's or other decision-making body's certification decision.
- D. If the City Council upholds the Director's ~~or~~ Planning Commission's Commission's or other decision-making body's certification of the final EIR, it may then immediately act on any appeal related to the project associated with the EIR.
- E. If the City Council ~~finds~~ does not uphold the Director's ~~or~~ Planning Commission's or other decision-making body's certification of the final EIR, the City Council may require that the EIR be revised and shall not take any action on the project.
- F. All decisions of the City Council shall be final.

SECTION 14. Section 21.07.080 of Chapter 21.07 of Title 21 of the San José Municipal Code is hereby amended to read as follows:

21.07.080 Request for Reconsideration of City Council's Certification as Initial Decision Making Body

- A. ~~The City Clerk shall mail a copy of any EIR certification decision made by the City Council under Sections 21.07.020 and 21.07.030 to any person who has, prior to the date of the certification decision, made a written request to the City~~

~~Clerk for such notice.~~

~~B.~~ Any interested person, prior to seeking judicial review of an EIR certification decision made by the City Council under Sections 21.07.020 and 21.07.030, shall file a petition for reconsideration with the City Clerk ~~within ten (10)~~ not later than three (3) business days following of the date of the decision.

CB. Failure to file a petition for reconsideration constitutes a waiver of the right to request reconsideration and the City Council's decision shall be final for all purposes. Upon timely receipt of a petition for reconsideration, the City Clerk shall schedule a reconsideration hearing to be commenced by the City Council no later than sixty (60) days after the filing of the petition. ~~Mailed~~ At least ten days prior to the reconsideration hearing, written notices of the date, time and place of such the hearing shall be placed in the mail to the person filing the request for reconsideration and the applicant will be provided to all interested persons at least ten (10) days prior to the hearing. At the conclusion of the hearing for reconsideration, the City Council may affirm, reverse, or modify its original decision, and may adopt additional findings of fact based upon the evidence submitted in any and all hearings conducted by the City Council concerning the matter.

DC. A petition for reconsideration shall specify, in detail, each and every ground for reconsideration. Failure of a petition to specify any particular ground or grounds for reconsideration, precludes that particular omitted ground or grounds from being raised or litigated in a subsequent judicial proceeding.

The grounds for reconsideration are limited to the following:

1. An offer of new relevant evidence which, in the exercise of reasonable diligence, could not have been produced at any earlier hearing conducted by the City Council.
2. An offer of relevant evidence which was improperly excluded at the prior City Council certification hearing.
3. Proof of facts which demonstrate that the City Council proceeded without, or in excess, of its jurisdiction.
4. Proof of facts which demonstrate that the City Council failed to provide a fair hearing.
5. Proof of facts which demonstrate that the City Council abused its discretion by:
 - a. Not proceeding in a manner required by law; or
 - b. Rendering a decision which was not supported by findings of fact;
or
 - c. Rendering a decision in which the findings of fact were not supported by the evidence.

CD. A petition for reconsideration is subject to a reconsideration fee as prescribed by resolution of the City Council. At the conclusion of the reconsideration hearing, the City Council may, in its sole discretion, refund all, or a portion, of the reconsideration fee to the petitioner.

RD:SSL:MD1
8/8/14

PASSED FOR PUBLICATION of title this _____ day of _____, 2014, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

City of San José CEQA and Planning Entitlement Aligned Processes

Regulations as amended through August 11, 2014

Planning Land Use Entitlement Application Type	CEQA Clearance Document Type	Initial Decisionmaker For CEQA Clearance Current Code (BLUE TEXT SHOWS APRIL CODE CHANGES)	Decisionmaker for CEQA Clearance on Appeal Current Code (BLUE TEXT SHOWS APRIL CODE CHANGES)	Initial Decisionmaker For Land Use Entitlement Application Current Code	Decisionmaker for Land Use Entitlement on Appeal Current Code	Initial Decisionmaker for COMBINED Land Use Entitlement AND CEQA Doc PROPOSED CODE	Decisionmaker for COMBINED Land Use Entitlement AND CEQA Doc on Appeal PROPOSED CODE
Dev Exception; Variance; Site Dev Permit; Planned Dev Permit; Special Use Permit; Single-Family House Permit; and Tree Removal Permit	EIR with Significant Impacts not mitigated to less than significant level/Statement of Overriding Considerations	City Council after recommendation by Planning Commission	No appeal, but reconsideration by Council can be requested within 10 days	Planning Director	Planning Commission generally; City Council for some SUPs in PQP Zoning District	CHANGE: City Council reconsiders EIR; then land use entitlement is upheld or nullified. Request for Reconsideration period for EIR changes to 3 business days.	Decisionmaker for COMBINED Land Use Entitlement AND CEQA Doc on Appeal PROPOSED CODE
	EIR with no Significant Impacts/no Statement of Overriding Considerations	Planning Director	3 business days to appeal to Council	Planning Director	Planning Commission generally; City Council for some SUPs in PQP Zoning District	NO CHANGE	CHANGE: If EIR and permit are appealed, both appeals will go to Council.
	MND/ND	Planning Director	3 business days to appeal to Council	Planning Director	Planning Commission generally; City Council for some SUPs in PQP Zoning District	NO CHANGE	CHANGE: If MND and permit are appealed, both appeals will go to Council.

Conditional Use Permit	EIR with Significant Impacts not mitigated to less than significant level/Statement of Overriding Considerations	City Council after recommendation by Planning Commission	No appeal, but reconsideration by Council can be requested within 10 days	Planning Commission	City Council	CHANGE: Request for CC Reconsideration period for EIR changes to <u>3 business days.</u>
	EIR with no Significant Impacts with mitigation/no Statement of Overriding Considerations	Planning Commission	3 business days to appeal to Council	Planning Commission	City Council	CHANGE: Request for CC Reconsideration period for EIR changes to <u>3 business days.</u>
	MND/ND	Planning Commission	3 business days to appeal Council	Planning Commission	City Council	NO CHANGE
Zonings, General Plan Amendments, or CUPs for large stadiums, large drinking establishments, or Offsale of alcohol where determination of Public Convenience or Necessity cannot be made by Planning Commission	EIR with Significant Impacts not mitigated to less than significant level/Statement of Overriding Considerations	City Council after recommendation by Planning Commission	No appeal, but reconsideration by Council can be requested within 10 days	City Council	NO APPEAL	CHANGE: Request for CC Reconsideration period for EIR changes to <u>3 business days.</u>
	EIR with no Significant Impacts with mitigation/no Statement of Overriding Considerations	City Council after recommendation by Planning Commission	No appeal, but reconsideration by Council can be requested within 10 days	City Council	NO APPEAL	CHANGE: Request for CC Reconsideration period for EIR changes to <u>3 business days.</u>
	MND/ND	City Council after recommendation by Planning Commission	3 business days to appeal Council after PC recommendation	City Council	NO APPEAL	NO CHANGE

CC=City Council CUP=Conditional Use Permit EIR=Environmental Impact Report MND=Mitigated Negative Declaration ND=Negative Declaration



Santa Clara & San Benito Counties Building & Construction Trades Council

2102 Almaden Road Suite 101 San Jose, CA 95125-2190 · Phone 408.265.7643 · Fax 408.265.2080

August 12, 2014

Josué García
Chief Executive Officer
Robert Baldini
President

VIA E-MAIL

Planning Commissioners
City of San Jose
200 East Santa Clara Street
San Jose, CA 95113

**Re: August 13th Planning Commission Agenda Item 4.a, CEQA
Streamlining Ordinance**

Dear Chairman Kamkar and members of the Planning Commission:

Please accept this letter on behalf of the Santa Clara & San Benito Counties Building & Construction Trades Council ("Trades Council"). On Wednesday, the Planning Commission will consider a proposed "CEQA Streamlining Ordinance." The staff report states that the ordinance will "ensure internal consistency within the Municipal Code" and "implement the requirements" of CEQA. The Trades Council supports the achievement of internal code consistency and compliance with CEQA, but many sections of the proposed ordinance are not in line with these objectives. The ordinance contains confusing procedural requirements, and it would stifle public notice and participation, conflict with public rights under CEQA, and establish a framework for ineffective and redundant City proceedings. The Trades Council asks the Planning Commission to adopt a "no" recommendation for the proposed ordinance, and urges the City to instead adopt procedures for CEQA review that are similar to those followed by other cities in California.

1. The City's "petition for reconsideration" process is flawed

Section 14 of the proposed ordinance would amend Section 21.07.080 of the Municipal Code, the "petition for reconsideration" process that applies to City Council decisions to certify an Environmental Impact Report ("EIR"). We are aware of no other cities that require members of the public to petition for an additional City Council hearing after an EIR is certified. The procedure is burdensome and potentially expensive for members of the public, is not contemplated by CEQA, and is inconsistent with CEQA. The proposed ordinance would even *shorten* the period for filing a petition for reconsideration, from 10 days to only 3 business days after City Council certification. A 3-day time limit is unrealistic, and there is little chance that the resulting petitions would be informative or helpful to the City Council in any way.

The City's petition-for-reconsideration requirement was first adopted by the City Council in April 2014. The Trades Council was unaware of the April ordinance, a fact that only underscores the point of our letter today: that a complex and time-limited procedure such as that proposed by the City will exclude members of the public on technical grounds rather than substantive grounds. The ordinance does not provide a

Boilermakers 549
Brick & Tile 3
Northern California
Carpenters Regional Council
Carpenters 405
Carpenters 2236
Carpet & Linoleum 12
Cement Masons 400
Electricians 332
Elevator Constructors 8
Glaziers 1621
Heat & Frost Insulators 16
Iron Workers 377
Laborers 270
Laborers 67
Lathers 9144
Millwrights 102
Operating Engineers 3
Painters District Council 16
Painters & Tapers 507
Plasterers 300
Plumbers & Steamfitters 393
Roofers 95
Sheet Metal Workers 104
Sign, Display 510
Sprinkler Fitters 483
Teamsters 287

Affiliated with:
State Building and
Construction Trades
Council of California
California Labor Federation,
AFL-CIO
California Labor C.O.P.E.
South Bay AFL-CIO
Labor Council



helpful model of informed decision-making, but instead erects roadblocks for those who seek to exercise their rights under state law.

a. *Mandatory petitions for reconsideration are highly disfavored in California and are inconsistent with CEQA*

The California Supreme Court has made it abundantly clear that mandating petitions for reconsideration of agency decisions serves no real purpose than to keep rightful litigants out of court, and this is not in keeping with state or federal law:

"In sum, even an alert legal practitioner could overlook the necessity of seeking rehearing, as a condition to judicial review, until after the deadline to act had passed, and many who petition before administrative bodies do so without the benefit of legal training. . . . When the parties are aware of the rule and comply with it, the administrative body presented with the same facts and arguments is unlikely to reverse its decision. The only likely consequence is delay and expense for both the parties and the administrative agency prior to the commencement of judicial proceedings. Of course, the courts' burden is marginally reduced by the occasional case when a party, unaware of the rule, fails to comply and thus is barred from seeking judicial review, but we believe the striking of potentially meritorious claims solely to clear them from a court's docket should not stand as a policy goal in and of itself. . . . Finally, all things being equal, we deem it preferable to apply our decisions in such a manner as to preserve, rather than foreclose, a litigant's day in court on the merits of his or her action." *Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 500-502, 509.

The City's ordinance is contrary to the Supreme Court's rationale, and contrary to state and federal laws which make clear that "the right to petition shall not be affected by the failure to seek reconsideration before the agency." (See Gov. Code § 11523, claims under the California Administrative Procedure Act.) Given the strong policy reasons and numerous laws and rulings that reject mandatory petitions for reconsideration in California, it is no surprise that other cities do not have mandatory reconsideration requirements in their municipal codes.

In the context of CEQA, a mandatory post-approval petitioning process conflicts with the legal rights that CEQA grants to members of public. CEQA's "exhaustion of administrative remedies" requirements are found in Public Resources Code section 21177. That statute requires only that objections must be "presented to the public agency orally or in writing during the public comment period . . . or prior the close of the public hearing on the project before the issuance of the notice of determination." That section also states that anyone who so objected to the project approval may file suit "agreeing with or supporting the comments of another person." The City's petitioning process would require a potential challenger to do *more* than present their objections to the City Council prior to the close of the public hearing. Moreover, it could be used to prevent a challenger from relying on comments raised by another person. This is inconsistent with the exhaustion provision in CEQA. Courts disapprove of local ordinances that curtail rights provided by state law.

c. *Three days is not a realistic amount of time for a member of the public to prepare and file a petition for reconsideration*

The currently proposed ordinance would shorten the petitioning period to 3 business days, which is an abnormally short time for a member of the public to respond to a City Council certification decision. The staff report states that the petitioning period should be shortened to 3 days to prevent undue delay in the "filing of Notices of Determination and project commencement dates." Under CEQA, however, the lead agency files a Notice of Determination "within five working days *after the approval or determination becomes final.*" (Pub. Resources Code § 21152.) The City, should it decide to retain the petition requirement at all, could simply note that its EIR certification is not final until the existing 10-day period for filing a petition has expired. Furthermore, delaying project commencement by 7 additional days is not a burden for project applicants, who often spend weeks, if not months, obtaining project permits and other approvals after an EIR is certified.

Staff does not provide any persuasive reasons to shorten the petitioning process to only 3 days. A member of the public wishing to challenge the City Council's decision to certify an EIR often needs to hire an attorney to represent them. Three days is not sufficient time to retain an attorney and draft a petition for reconsideration stating every ground upon which a lawsuit might be filed. CEQA gives petitioners ten times as many days to develop their claims. If the City adopts a 3-day petitioning period, it is all but guaranteed that petitions for reconsideration will include nothing new for the City Council to consider, leading to redundant and unnecessary hearings.

d. *If the City retains its petition for reconsideration requirement, clear written notice and delay of project approvals must occur*

The proposed ordinance would allow the City Council to "affirm, reverse, or modify its original decision" to certify an EIR, or to "adopt additional findings of fact." Under CEQA, a lead agency cannot approve a project until its findings and EIR certification decisions are final. Thus, the City Council would be required to delay or reverse its decision to approve a project. The ordinance does not specify that this will occur.

Finally, it is critical that members of the public be informed of the petition for reconsideration requirement, in bold letters, on project hearing notices and related documents.

2. The proposed ordinance creates vague, confusing, and potentially redundant land use appeal requirements

Rather than "streamlining" the CEQA process, the proposed ordinance adds confusing language to the Municipal Code that would frustrate public participation and result in unnecessary layers of public decision-making:

a. Sections 10 and 11 of the ordinance would amend the appeal procedures that currently apply to CEQA determinations made by the Planning Director and Planning Commission. Under Municipal Code Sections

21.04.140 and 21.07.040, environmental clearance determinations made by the Planning Director or Planning Commission may be appealed to the City Council. The proposed ordinance would add the words "or other decision-making body" to the list of decision-makers whose environmental clearance determinations may be appealed. The only other designated decision-making body is the City Council. Thus, the proposed ordinance can be interpreted to mean that a member of the public should appeal a City Council decision *to the City Council* for another hearing. The addition of this language is vague, confusing, unnecessary, and should not be adopted.

- b. Section 14 of the ordinance involves the petition for reconsideration process in Municipal Code Section 21.070.080. Petitions for reconsideration are required only for certification decisions made by the City Council under Sections 21.07.020 and 21.07.030. The petitioning requirement does not apply to decisions made by the City Council on appeal, under Sections 21.07.040 through 21.07.060. The ordinance is confusing about the petitioning requirements for projects that are upheld on appeal to the City Council. The Trades Council requests that the mandatory reconsideration process be removed altogether from the Municipal Code.

3. **The ordinance deletes a number of public notice requirements, apparently to reduce public participation in the land use process**

The ordinance would reduce the type of notice provided to members of the public in at least three ways:

- a. Section 12 of the ordinance would delete the requirement in Municipal Code Section 21.07.050.B, that owners of property contiguous to a project site must receive notice of appeal hearings. This requirement has been part of the Municipal Code for years, and the City Council chose to keep this requirement when it recently amended this section.
- b. Section 14 of the proposed ordinance would delete the requirement that the City Clerk shall provide notice of an EIR certification decision to those who make a written request for such notice.
- c. Section 14 would also delete the current requirement that the City Clerk shall provide notice to all interested persons at least 10 days prior to a reconsideration hearing. It would instead require that notice be given only to the applicant and the person who filed the petition for reconsideration.

Staff has not provided sufficient justification for the proposed amendments described above. The ordinance would not streamline the CEQA process or make the City's existing appeal requirements more easy to understand. Instead, it appears that the entire purpose of the proposed ordinance is to preclude public notice and participation in the CEQA process, and add more layers of complex procedural requirements to an already difficult-to-understand ordinance. The resulting Municipal

Code provisions would be substantially different from the procedures adopted by other cities in California.

Thank you for your consideration.

Sincerely,



Josué García
Chief Executive Officer
Santa Clara & San Benito Counties
Building & Construction Trades Council

Mail to: mkamkar7@gmail.com
dyob@hopkinscarley.com
Ed@Abelite.com
edesab@yahoo.com
kline@libraryworld.com
brian.ohalloran@att.net
nick@nickpham.com

Cc: Harry Freitas, Planning Director (Harry.Freitas@sanjoseca.gov)
Jenny Nusbaum, Project Manager (Jenny.Nusbaum@sanjoseca.gov)